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Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the first report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, submitted pursuant to Council resolution 32/2.

In the report, the Independent Expert provides an overview of violence and discrimination based on sexual orientation and gender identity. Such acts are committed in all corners of the world, and victims are presumed to be in the millions, every year. These acts extend from daily exclusion and discrimination to the most heinous acts, including torture and arbitrary killings. At their root lie the intent to punish the non-conformity of victims with preconceived notions of what should be their sexual orientation or gender identity. The Independent Expert highlights how lesbian, gay, bisexual, trans and gender non-conforming persons are affected differently by these acts and how intersecting factors have an impact on their vulnerability and on their risk of exclusion and marginalization. He also examines the link between hate speech and hate crimes, and the role of the media in amplifying and disseminating messages that reinforce stigma and foster violence and discrimination.

The Independent Expert also explores the root causes of violence and discrimination based on sexual orientation and gender identity, including deeply entrenched stigma and prejudice reinforced by discriminatory laws and regulations that foster a climate where hate speech, violence and discrimination are condoned and perpetrated with impunity. He examines the impact of social prejudice and criminalization on the marginalization and exclusion of lesbian, gay, bisexual or trans and gender non-conforming persons, and addresses the issue of the negation of violence and discrimination based on sexual orientation or gender identity and the resulting data gap, highlighting positive examples of data-gathering and recent measures taken by States to address violence and discrimination based on sexual orientation or gender identity, including steps to acknowledge responsibility as an essential element in the establishment of historical truth, the process of reparation and the reconstitution of the social fabric.

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Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to its resolution 32/2, in which the Council established the mandate of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. It is the first prepared by the current mandate holder, Víctor Madrigal-Borloz, since he took up his functions, and is issued on the basis of the work carried out from 1 January to 30 April 2018.

2. The Independent Expert has accepted to be the custodian of a mandate stemming from the vision of States committed to eradicating violence and discrimination based on sexual orientation and gender identity, and a resolve of other stakeholders to inspire and nurture this unpostponable task. At the centre of Council resolution 32/2 lie both the principle that every person is entitled to live free from violence and discrimination and the acknowledgement that such acts are often perpetrated against individuals, groups, communities or populations whose sexual orientation or gender identity vary from a particular norm.

3. The mandate is anchored in universally accepted human rights principles. Council resolution 32/2 builds on the idea that the ultimate objective of the community of nations is the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace.

II. Activities from 1 January to 30 April 2018

4. From 1 January to 30 April 2018, the Independent Expert engaged in dialogue and consulted with States and other stakeholders, including United Nations agencies, funds and programmes, regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions.

5. In order to ensure efficient cooperation, the Independent Expert engaged actively with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other key entities within the United Nations human rights system, such as the Coordination Committee of Special Procedures. With this objective in mind, he conducted two working sessions in Geneva, of two days each, on 18 and 19 January and on 15 and 16 March 2018.

6. In Geneva on 19 January, in London on 22 January, in Copenhagen on 31 January, in Washington, D.C. on 6 March, in New York on 9 March, in Washington, D.C. on 27 March and in London on 19 April 2018, the Independent Expert held meetings with representatives of States and groups of States, among them those promoting Human Rights Council resolution 32/2 and the Equal Rights Coalition, and representatives of international and regional organizations, to discuss the views of the Independent Expert and his approach to the mandate.

7. The Independent Expert took part in the second trilateral dialogue between the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights and the United Nations human rights system, held in Washington, D.C. from 26 to 28 March 2018. The second dialogue had the aim of discussing matters concerning human rights through the lens of sexual orientation, gender identity and sex characteristics, and had three overarching objectives: to share best practices and challenges; to identify fields of collaboration; and to reaffirm the commitment of United Nations human rights experts and the Inter-American and African regional human rights systems to the eradication of violence and discrimination based on sexual orientation and gender identity. United Nations experts underlined their support for the extraordinary work carried out in this field by the regional systems, which in turn recognized the fundamental importance of including the United Nations-based perspective into regional work.

8. The Independent Expert had the opportunity to interact with a wide range of human rights activists. Meetings with global organizations and individual experts were held on 2, 5 and 7 February, 1, 3, 7 and 20 March and 3 and 13 April 2018. On 22 February and 19 April 2018, he met with a wide range of activists from Commonwealth countries in London. On 27 February 2018, he met a group of activists from Buenos Aires, Berlin, Geneva and New York through a virtual platform. All meetings were focused on the dissemination of the objectives and functions of the mandate, and on receiving input with regard to the issue of violence and discrimination as seen by stakeholders, with particular emphasis on the criminalization of same-sex activity.

9. The independent Expert also attended academic discussions on 14 February 2018 at the Raoul Wallenberg Institute in Lund, Sweden, and on 29 and 30 March 2018 at Yale University in New Haven, Connecticut, the latter under the theme of "Gender analytics and feminist social justice approaches and the SOGI Mandate".

10. Within the active outreach approach that the Independent Expert intends to impress in the mandate, he gave five interviews, issued an individual press release, was involved in seven joint statements and press releases and maintained an active social media presence throughout the period. He also took part in a virtual training session on 16 January 2018.[1]

11. During the period under review, the Independent Expert provided technical assistance for the development of tools for the protection of LGBTI persons deprived of liberty; on 15 and 16 March 2018, to review a guide on monitoring to assist bodies with a monitoring mandate;[2] and on 3 and 4 April, in relation to standards for the protection of LGBTI persons deprived of liberty.[3] He issued four communications in support of national efforts to combat specific cases of alleged violence and discrimination.[4] The Independent Expert underlines the importance of this mechanism, which allows for the provision of advisory services, technical assistance, capacity-building and international cooperation, in compliance with Council resolution 32/2, paragraph 3 (f).

12. The Independent Expert sent visit requests to Armenia, Burkina Faso, Cambodia, Georgia, Ghana, Kenya, Mozambique, Nepal, Poland, Sri Lanka, Thailand and Ukraine.

13. The Independent Expert thanks Governments, civil society organizations, activists, international organizations, individuals and other stakeholders for their invaluable support in the initial months of his mandate.

III. Objectives

14. The Independent Expert recognizes two overarching objectives for the mandate: heightened awareness and support for effective State measures.

15. The Independent Expert has a mandate to raise the visibility of violence and discrimination based on sexual orientation and gender identity and to identify their root causes. Heightened awareness of the levels of violence and discrimination to which lesbian, gay, bisexual, trans and gender non-conforming persons are subjected every day is in itself a significant measure to address this scourge. With the aim of complying with this dictate, a section on violence and discrimination is included below.

16. In its resolution 32/2, the Human Rights Council describes a sequence of actions designed to support States in identifying, designing and implementing measures to eradicate violence and discrimination based on sexual orientation and gender identity. The

[1] See https://williamsinstitute.law.ucla.edu/events/yp10-update-jan-2018/.

[2] See https://apt.ch/en/events/experts-meeting-to-review-a-guide-on-monitoring-the-situation-of-lgbti-persons-deprived-of-liberty.

[3] Center for Justice and International Law, Standards applicable to LGBTI persons deprived of liberty.

[4] Communications are available from https://spcommreports.ohchr.org/Tmsearch/TMDocuments. Since the creation of the mandate, a total of 18 communications have been sent to Azerbaijan, Brazil, Chile, Egypt, El Salvador, Haiti, Honduras, Indonesia, Peru, the Republic of Korea, the Russian Federation, Singapore and Tunisia.

measures refer to all realms of action of the State: legislation and public policy, executive and administrative action, and access to justice, including access to an effective remedy and redress.

17. In 2017, the previous mandate holder, Vitit Muntarbhorn, identified six underpinnings: the decriminalization of consensual same-sex relations and of gender identity and expression; effective anti-discrimination measures; the legal recognition of gender identity; destigmatization linked with depathologization; sociocultural inclusion; and education with empathy. The mandate holder delivered an analysis of the first pair (see A/72/172). The Independent Expert is thankful to Professor Muntarbhorn for this significant contribution to the analytical framework of the mandate and will provide continuity to it in his reports to the Human Rights Council and the General Assembly.

IV. Approaches

18. Human Rights Council resolution 32/2 provides strong guidance with regard to certain approaches that are fundamental for the mandate: dialogue and intersectionality.

A. Dialogue

19. In its resolution 32/2, the Human Rights Council requested the mandate holder to engage in dialogue with all relevant stakeholders and to work in cooperation with States. The Independent Expert highly values this clear guidance on a model of active outreach for collaboration. Much information was gathered during the first year of the mandate, and the mandate holder will arrange other consultations after having analysed all input received and identified areas requiring additional input.

20. Furthermore, the Independent Expert takes inspiration in the steadfast determination of the previous mandate holder to ensure the door to the mandate remains always open, and is convinced that active listening is a fundamental part of his task. This dialogue must be built upon the cornerstone provided by basic principles and findings, inter alia, that:

(a) Every person is entitled to the human rights and freedoms enshrined in international human rights law without distinction based on sexual orientation or gender identity;

(b) Legislation, public policy and jurisprudence that criminalize same-sex relationships and particular gender identities are per se contrary to international human rights law, fuel stigma, legitimize prejudice and expose people to family and institutional violence and further human rights abuses, such as hate crimes, death threats and torture (A/72/172, para. 32). It then follows that the execution of any sanction based on such measures is a violation of international human rights law; deprivation of liberty, for example, is akin to arbitrary detention. The imposition of the death penalty as a result of such legislation or measures is an arbitrary killing[5] and a breach of article 6 of the International Covenant on Civil and Political Rights (see A/HRC/4/20, para. 52).

21. Within the boundaries prescribed by Human Rights Council resolution 32/2 and international human rights law, the Independent Expert looks forward to rich, evidence-based dialogue on the range of issues that States may bear in mind with regard to their national laws and development priorities, and the various religious and ethical values and cultural backgrounds of their people without disregarding their duty to promote and protect all human rights and fundamental freedoms.[6]

[5] Human Rights Council resolution 36/17, para. 3.

[6] Vienna Declaration and Programme of Action, para. 5.

B. Intersectionality

22. In its resolution 32/2, the Human Rights Council requested the mandate holder to address the multiple, intersecting and aggravated forms of violence and discrimination faced by persons based on their sexual orientation and gender identity. Such an analysis requires a multidimensional assessment of all the social factors combining to create an understanding of norms with regard to gender, sex and sexual attraction. In particular, this analytical process must take into account the fact that at the crux of what is considered the norm for sexual orientation or gender identity in a particular context are notions of the binary and non-binary, the male and the female, and the masculine and the feminine.

23. The mandate holder is therefore guided to an intersectional approach that remains aware of all conditions that create the substantively distinct life experience [7] of an individual. As one stakeholder stated to the mandate holder, "we hold many identities in one body", and violent actions against a person will often result from intersecting factors that create a continuum of violence and a dynamic of disempowerment;[8] for example, a woman feeling profound emotional, affective and sexual attraction for other women may choose to self-identify as a lesbian or as bisexual, but will also relate to other equally relevant factors that shape who she is in the context in which she lives, such as race, ethnicity, religion or belief, health, status, age, class and caste, as well as migration or economic status.[9]

24. Intersectionality also describes the dynamic process of the lived experience, which occurs in space and time: for example, the mandate holder recognizes the needs of large numbers of ageing lesbian, gay, bisexual and trans or gender non-conforming persons, the asymmetries between the rural and the urban, and the largely unexplored intersections with disability, racism, xenophobia or the cycles of violence that motivate persons to flee their country.

25. The mandate exists at one of the points of intersection of these perspectives. Although the Independent Expert recognizes the complexity of these and other existential and political points of departure and the connected dynamics, he is persuaded that within the expansions and contractions of such a universe resides extraordinary energy and potential to bring about constructive change.

V. Violence and discrimination based on sexual orientation and gender identity

A. Overview

26. Violence and discrimination based on sexual orientation and gender identity exist in all corners of the world. Several comprehensive reviews have shown that lesbian, gay, bisexual, trans and gender non-conforming persons are at heightened risk of physical and sexual violence,[10] and that in most of those cases, sexual orientation or gender identity

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[7] Association for Women's Rights in Development, "Intersectionality: A Tool for Gender and Economic Justice", *Women's Rights and Economic Change*, No. 9 August 2004, p. 2.

[8] See Division for the Advancement of Women, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Development Fund for Women, "Gender and racial discrimination", report of the Expert Group Meeting, 21–24 November 2000, Zagreb. See also OHCHR and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), *Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)*, 2014, pp. 43–45.

[9] General recommendation No. 28 (2010) of the Committee on the Elimination of Discrimination against Women.

[10] Kimberly H. McManama O'Brien, Richard T. Liu, Jennifer M. Putney, Taylor A. Burke and Laika D. Aguinaldo, "Suicide and self-injury in gender and sexual minority populations" in *LGBT Health: Meeting the Needs of Gender and Sexual Minorities*, K. Bryant Smalley, Jacob C. Warren, Nikki Barefoot, eds. (Springer Publishing Company, New York, 2017), pp. 181–198.

played a key role in the perpetration of the abuse.[11] The data available show that they face the near-certainty of suffering violence during their lives, and that as a general rule they live every day in the awareness and fear of it.

27. The mandate holder remains deeply concerned by information on killings of lesbian, gay, bisexual, trans and gender non-conforming persons, or those perceived as such by their attackers. Where trustworthy data exist, the resulting picture is shocking and includes killings committed on the basis of gender identity and gender expression, the imposition of death penalty for homosexuality (see A/HRC/35/23 and A/71/372), killings in private homes and public spaces known as "social cleansing" (A/HRC/20/16, para. 72 and A/56/156, para. 18) and so-called "honour killings".

28. The violence reported against persons on the basis of their actual or perceived sexual orientation or gender identity also includes death threats, beatings, corporal punishment imposed as a penalty for same-sex conduct, arbitrary arrest and detention, abduction, incommunicado detention, rape and sexual assault, humiliation, verbal abuse, harassment, bullying, hate speech and forced medical examinations, including anal examinations, and instances of so-called "conversion therapy". Considering the pain and suffering caused and the implicit discriminatory purpose and intent of these acts, they may constitute torture or other cruel, inhuman or degrading treatment or punishment in situation where a State official is involved, at least by acquiescence (A/HRC/22/53, para. 17).

29. In some cases, the acts of violence are perpetrated by State agents pursuant to legislation or regulations connected with the criminalization of same-sex relations or with concepts such as "public order" or "social mores". Some cases appear to be isolated episodes of hate-motivated violence, while others seem to have been organized and planned as part of systematic policies or patterns aimed at targeting the victims. The mandate holder has, for example, expressed his serious concern at allegations of unlawful detention, torture, ill-treatment and extrajudicial killing of individuals in Chechnya in the Russian Federation,[12] investigation and prosecution of military personnel in the Republic of Korea,[13] and persecution, unlawful arrests and detentions, torture and ill-treatment in Azerbaijan,[14] Egypt[15] and Indonesia. Forced anal examinations amount to torture or ill-treatment (A/HRC/31/57, para. 36): this medically worthless procedure,[16] whereby a doctor or other health personnel insert their fingers or other objects into the anus of a person suspected of same-sex conduct to "prove" or "disprove" homosexuality, has been reported in Cameroon,[17] Egypt (CAT/C/CR/29/4, para. 6 (k)),[18] Kenya,[19] Lebanon (CAT/C/LBN/CO/1, paras. 14–15), Tunisia (CAT/C/TUN/CO/3, paras. 41–42; see also A/HRC/36/5, paras. 67, 125.48, 127.36 and 127.41), Turkmenistan,[20] Uganda[21] the United Republic of Tanzania[22] and Zambia (A/HRC/37/14, para. 131.98).

30. Actions of violence extend to private spaces: for example, the mandate holder received reports about the use by security services of social media and GPS-enabled applications, commonly used by gay persons to connect with each other, in order to locate

[11] Karel Blondeel, Sofia de Vasconcelos, Claudia Garcia-Moreno, Rob Stephenson, Marleen Temmerman and Igor Toskin, "Violence motivated by perception of sexual orientation and gender identity: a systematic review", *Bulletin of the World Health Organization*, vol. 96, No. 1, 2018, pp. 29–41.

[12] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23080.

[13] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23282.

[14] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23369.

[15] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23424.

[16] International Forensic Expert Group, Statement on Anal Examinations in Cases of Alleged Homosexuality, May 2016.

[17] Human Rights Watch, "Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions", 12 July 2016, p. 19.

[18] See also A/HRC/16/47/Add.1, opinion No. 25/2009 (Egypt), para. 24.

[19] Human Rights Watch, "Dignity Debased" (see footnote 19), p. 28.

[20] Ibid., p. 47.

[21] Ibid., p. 49.

[22] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23420.

and arrest them. Several reports also referred to the use of personal data stored in mobile phones, including the history of live communications and messages, to identify other persons suspected of being gay, leading to arrest and detention.[23]

31. Other than State agents, perpetrators of such violations also include local militia, gangs, religious extremists (A/HRC/34/56, paras. 3, 29 and 86) and extreme nationalists. In Central America, for example, numerous reports have been made of violent attacks against and killings of lesbian, gay, bisexual, trans and gender non-conforming persons, in particular trans women, by criminal gangs.[24]

32. Perpetrators also include partners and family members:[25] a recent study in Asia found that the primary perpetrators of violence against lesbian, gay and bisexual persons are within the family. Reports included cases of spousal violence by heterosexual husbands of lesbians in forced marriages.[26]

33. Underreporting, negligent investigations and prosecution, and almost non-existent convictions lead to a situation of systematic impunity. No element in the chain of justice is unaffected by such factors. Trans women and gender non-conforming persons are often targeted by justice sector officers as negative prejudices and stereotypes about trans and *travesti* persons often associate them with the idea of criminality. This has direct consequences for their access to justice; their gender identity functions tacitly as an aggravating circumstance when they are denounced and as reasons for disrepute when they denounce someone else. The fact of being *travesti* or trans undermines their credibility and affects the impartiality of justice officers (see A/HRC/38/43/Add.1, para. 52).

34. Violations and discrimination extend to all facets of life: lesbian, gay, bisexual, trans and gender non-conforming persons are often treated as if they were by definition sick or disordered (A/HRC/35/21, paras. 48 and 58), a process referred to by the mandate holder as "pathologization". Discrimination affects these persons in their access to sanitation, menstrual hygiene and toilets, in particular in humanitarian situations and areas affected by disaster (A/HRC/33/49, paras. 2, 9, 13 and 30).

35. When progress is achieved, backlash is common. Some States have strengthened measures criminalizing same-sex conduct, or are considering to do so, and impede the work of human rights defenders in the field of sexual orientation and gender identity.[27]

B. Hate crimes and hate speech

36. Hate crimes based on sexual orientation or gender identity may be qualified as biphobic, homophobic, misogynistic or transphobic, or in line with other systemic biases. These violations are not manifest in a country or region only, and there is consistent information from all regions in which States and other actors gather data and render it public. The Organization for Security and Cooperation in Europe (OSCE), the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights concur in their identification and condemnation of heinous acts, including dismembering, mutilation, stoning, decapitation, burning or impalement.[28]

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[23] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23080; https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23282; https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23369; https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23424.

[24] Amnesty International, "'No Safe Place': Salvadorans, Guatemalans and Hondurans Seeking Asylum in Mexico Based on Their Sexual Orientation and/or Gender Identity", 27 November 2017.

[25] Inter-American Commission on Human Rights, "Violence against LGBTI Persons", 2015, para. 104.

[26] International Gay and Lesbian Human Rights Commission, *Violence: Through the Lens of Lesbians, Bisexual Women and Trans People in Asia*, New York 2014, p. 17.

[27] Aengus Carroll and Lucas Ramón Mendos, *State-Sponsored Homophobia*, ILGA, 12th ed., 2017, pp. 5, 10.

[28] Inter-American Commission on Human Rights, "Violence against LGBTI Persons" (see footnote 25), para. 108; "An Overview of Violence against LGBTI Persons in the Americas: a Registry Document Acts of Violence between January 1, 2013 and March 31, 2014", press release No. 153A/17.

37. The unique features of hate-motivated crimes should be analysed in the light of broader power structures, deeply entrenched gender inequalities and rigid sexual and gender norms. Violence based on sexual orientation or gender identity can be understood as a means to regain control or as a punishment for resisting or transgressing gender norms and behaviours.[29]

38. According to some sources, the rising number of hate crimes based on sexual orientation and gender identity correlates with a steep rise in ultraconservative political leaders and religious groups using their platforms to promote bigotry, dehumanize persons on the basis of sexual orientation, gender identity or gender expression, and foster stigma and intolerance among their constituencies.[30] Such discourse is sometimes used as a means to bolster popularity and detract attention from pressing economic and internal political problems. An analysis of events in 2016 highlights the risks of regression even in progressive States, where it is fuelled by anti-rights sectors or leaders.[31] Similarly, the Special Rapporteur on violence against women, its causes and consequences noted the paradox in the advancement in the protection of individuals' sexual rights on the one hand and the increasing escalation of hate crimes on the other (A/HRC/20/16, para. 72).

39. In some instances, discriminatory messages have also been disseminated and amplified through media outlets, reinforcing stigma of and fostering violence and discrimination against lesbian, gay, bisexual, trans and gender non-conforming persons.[32] A study undertaken in the Caribbean found that many media outlets reinforced negative stereotypes that can lead to violence against lesbian, gay, bisexual, trans and gender non-conforming persons.[33] Similarly, a report on violence in Africa[34] found that "negative and sensationalised media reporting" was one of the factors underlying an upsurge of violence against LGBTI persons, whereas in Europe, lesbian, gay, bisexual, trans and gender non-conforming persons have, in some instances, been portrayed by the media and politicians as a threatening and inferior group, posing a danger to public health and "traditional" structures.[35]

C. Violence and discrimination based on gender identity

40. Transphobic violence, like other forms of gender-based violence, stems from gender norms and stereotypes, enforced by unequal power dynamics.[36] It is further aggravated when it intersects with other structural inequalities resulting in poverty, homelessness and lack of job opportunities or with other grounds for discrimination.

December 2014; OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Hate Crimes in the OSCE Region: Incidents and Responses*, annual reports (available from http://hatecrime.osce.org/taxonomy/term/235); African Commission on Human and Peoples' Rights, resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, 2014.

[29] Blondeel et al., "Violence motivated by perception of sexual orientation" (see footnote 11). See also Rachel Jewkes, Michael Flood, James Lang, "From work with men and boys to changes of social norms and reduction of inequities in gender relations: a conceptual shift in prevention of violence against women and girls", *Lancet*, vol. 385, No. 9977 (18 April 2015).

[30] Grupo Gay da Bahia, "Pessoas LGBT mortas no Brasil", Relatório 2017. See also GLAAD, Accelerating Acceptance 2018.

[31] Carroll and Mendos, *State-Sponsored Homophobia* (see footnote 27).

[32] Inter-American Commission on Human Rights, "Violence against LGBTI Persons" (see footnote 25).

[33] International Gay and Lesbian Human Rights Commission and United and Strong, *Homophobia and Transphobia in Caribbean Media: A Baseline Study in Belize, Grenada, Guyana, Jamaica and Saint Lucia*, New York 2015.

[34] Coalition of African Lesbians and African Men for Sexual Health and Rights, *Violence based on perceived or real sexual orientation and gender identity in Africa*, 2013, p. 37.

[35] OSCE/ODIHR, *Hate Crimes in the OSCE Region* (see footnote 28).

[36] Asia Pacific Forum of National Human Rights Institutions (APF) and United Nations Development Programme (UNDP), *Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions*, 2016.

41. Trans and gender non-conforming persons, especially when they are persons of colour, belong to ethnic minorities or are migrants, living with HIV, or sex workers, are particularly at risk of violence, including of killing, beatings, mutilation, rape and other forms of abuse and maltreatment. A striking indicator of gender-based violence against them is the high murder rate. A monitoring project recorded a total of 2,609 reports of murdered trans and gender non-conforming people in 71 countries worldwide between 1 January 2008 and 30 September 2017. Given that the murders of trans and gender non-confirming people are not systematically recorded and that in most countries a system to produce adequate data is not even in place, the actual number is certainly much higher.[37]

42. Information currently available suggests that trans men and other trans-masculine persons tend to be less visible in reports and data than lesbians, gays or trans women. Arguably, if this is a reflection of less visibility in everyday situations, this may shield them from the types of societal violence usually affecting other gender non-conforming persons;[38] they are, however, victims of severe violence in the family, in the health sector, and of school bullying.[39] Acts of violence include verbal, physical and sexual abuse, including so-called "corrective" rape, and forced marriage.[40]

43. Trans persons are particularly vulnerable to human rights violations when their name and sex details in official documents do not match their gender identity or expression. Inaccurate or inadequate identity documents may result in greater levels of violence and extortion, exclusion from school and the official labour market, housing, health (A/HRC/35/21, para. 58) and access to other social services, and in being able to cross borders. In times of emergencies, such as natural disasters or a humanitarian crisis, the lack of identity documents matching gender expression may even have a greater level of significance, for example when seeking access to emergency care, services and protection measures.

44. Moreover, trans persons are also victim of violence in health-care settings. In order to practice their right to recognition before the law, they are regularly forced into involuntary psychiatric evaluations, unwanted surgeries, sterilization or other coercive medical procedures, often justified by discriminatory medical classifications (see A/HRC/19/41, para. 57 and A/HRC/29/23, para. 54).[41]

D. Violence and discrimination based on sexual orientation

45. Misogyny, patriarchy and gender inequalities put lesbian and bisexual women at risk of violence. They are victims of rape — targeted to punish them or, allegedly, in efforts to "change" their sexual orientation — and also of forced marriage, female genital mutilation, forcible impregnation, collective beatings for public display of affection, attacks with acid and "conversion therapies". In many cases, stigma is reinforced by deeply-rooted cultural norms and beliefs about masculinity, the concept of the "traditional" family or the use of women as a source of income in circumstances where there is great poverty. Lesbian and

[37] Trans Murder Monitoring, Transrespect versus Transphobia Worldwide (TvT) (see https://transrespect.org/en/trans-murder-monitoring/tmm-resources/); Boglarka Fedorko and Lukas Berredo, *The vicious circle of violence: trans and gender-diverse people, migration, and sex work*, TvT Publication Series, vol. 16, October 2017. See also Transgender Europe (TGEU), "Trans Day of Remembrance (TDoR) 2017", press release, 14 November 2017 and A/HRC/38/43/Add.1, para. 47.

[38] Inter-American Commission on Human Rights, "An Overview of Violence" (see footnote 28).

[39] Inter-American Commission on Human Rights, "Violence against LGBTI Persons" (see footnote 25), para. 104.

[40] APF and UNDP, *Promoting and Protecting Human Rights* (see footnote 36); Transgender Europe, *For the record – Documenting violence against trans people: experiences from Armenia, Georgia, Germany, Moldova, Russia, and Ukraine*, December 2016, p. 51; Human Rights Watch, "We'll Show You You're a Woman": Violence and Discrimination against Black Lesbians and Transgender Men in South Africa, December 2011. Also based on submissions by 6Rang, Iranian Lesbian and Transgender Network to the Independent Expert.

[41] See also OHCHR, "Pathologization — Being lesbian, gay, bisexual and/or trans is not an illness" for International Day against Homophobia, Transphobia and Biphobia, 12 May 2016.

bisexual women are especially at risk of acts of sexual or intrafamily and domestic violence.[42]

46. The mandate holder notes the difficulty of documenting violence specifically targeting bisexual persons, already identified by the Inter-American Commission.[43] Research reveals that bisexual persons are more prone than lesbian or gay persons to experience intimate partner violence, with shocking rates of intimate partner violence, domestic violence, rape and sexual assault.[44] One survey showed that 61 per cent of bisexual women and 37 per cent of bisexual men reported having experienced rape, physical violence and/or stalking by an intimate partner, and that 46 per cent of bisexual women had been raped.[45]

47. In addition to the above-mentioned institutional and societal violence, lesbian, gay and bisexual persons may be subjected to torture and ill-treatment in health related and other settings. "Conversion therapies" are treatments supposedly able to change an individual's sexual orientation. Such practices are harmful to patients and may cause severe pain and suffering and lead to depression, anxiety and suicidal ideation.[46] Despite being widely repudiated by major mental health organizations, only a few States Members of the United Nations actually ban them.[47] They are practiced not only by some health-care professionals but also by clergy members or spiritual advisers in the context of religious practice.[48] A recent study revealed the extent of this practice at the global level: in the United States of America alone, some 698,000 lesbian, gay, bisexual, trans or gender non-conforming persons have received "conversion" therapy at some point in their lives, and over half of them reportedly when they were adolescents.[49]

VI. Root causes of violence and discrimination based on sexual orientation and gender identity

48. At the root of the acts of violence and discrimination under examination lies the intent to punish based on preconceived notions of what the victim's sexual orientation or gender identity should be, with a binary understanding of what constitutes a male and a female (A/56/156, para. 17; A/HRC/35/23, para. 16.)[50] or the masculine and the feminine, or with stereotypes of gender sexuality (A/HRC/20/16, para. 71). The connected acts are invariably the manifestation of deeply entrenched stigma and prejudice, irrational hatred

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[42] Inter-American Commission on Human Rights, "An Overview of Violence" (see footnote 28); APF and UNDP, *Promoting and Protecting Human Rights* (see footnote 36). See also the report of the Pacific LGBTQI Human Rights Conference, Nuku'alofa, Tonga, 11–14 May 2015 and ActionAid, "Hate crimes: the rise of 'corrective' rape in South Africa", 12 March 2009.

[43] Inter-American Commission on Human Rights, "An Overview of Violence" (see footnote 28).

[44] Movement Advancement Project, *Invisible Majority: The Disparities Facing Bisexual People and How to Remedy Them*, September 2016, p. 20.

[45] Mikel L. Walters, Jieru Chen and Matthew J. Breiding, *The National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation*, January 2013. See also ILGA Bisexual Secretariat, "The Promotion and Protection of the Human Rights of Bisexual Persons: challenges and opportunities", March 2018; Movement Advancement Project, BiNet USA, Bisexual Resource Center, *Understanding issues facing bisexual Americans*, 2014; and Meg Barker, Christina Richards, Rebecca Jones, Helen Bowes-Catton, Tracey Plowman, Jen Yockney and Marcus Morgan, *The Bisexuality Report*, 2012.

[46] See Christy Mallory, Taylor N.T. Brown and Kerith J. Conron, "Conversion Therapy and LGBT Youth", Williams Institute, January 2018 and Jack Drescher et al., "The Growing Regulation of Conversion Therapy", *Journal of Medical Regulation*, vol. 102, No. 2 (2016).

[47] Carroll and Mendos, *State-Sponsored Homophobia* (see footnote 27), p. 67.

[48] Mallory et al, "Conversion Therapy and LGBT Youth" (2018) (see footnote 46) and Jack Drescher et al., *The Growing Regulation of Conversion Therapy* (see footnote 46).

[49] Mallory et al., "Conversion Therapy and LGBT Youth" (see footnote 46).

[50] See also Inter-American Commission on Human Rights, "Violence against LGBTI Persons" (see footnote 25), para. 25; A/56/156, para. 17; A/HRC/35/23, para. 16. See also Emilia L. Lombardi, Riki Anne Wilchins, Dana Priesing and Diana Malouf, "Gender Violence: Transgender Experiences with Violence and Discrimination", *Journal of Homosexuality* vol. 42, No. 1 (2001), pp. 89–101.

and a form of gender-based violence, driven by an intention to punish those seen as defying gender norms (A/HRC/19/41, para. 20).[51] Acts of violence and discrimination may also be a means to justify inequality and to preserve the status quo in power relations.

49. The dynamics of this process have been described by different special procedure mandate holders, who concur that stigma is attached to an identity that is labelled as abnormal and based on a socially constructed process of alienation between "us" and "them" (A/HRC/21/42, para. 12), a "process of the dehumanization of the victim, often a necessary condition for torture and ill-treatment to be perpetrated (A/56/156, para. 19).

A. Legislation and other regulations

50. More than 3 billion people, almost half of the world population, live in the 72 countries in which law or other measures criminalizes on the basis of sexual orientation.[52] In the cases in which the punishment is not the death penalty, it is usually incarceration that varies from one month to life imprisonment.

51. Consensual same-sex conduct is punishable by death in the Islamic Republic of Iran, Mauritania, Saudi Arabia, the Sudan and Yemen, and parts of Nigeria and Somalia. Death is also the prescribed punishment for homosexuality in the revised penal code of Brunei, although reportedly relevant provisions have yet to take effect.

52. These discriminatory laws derive from French or British colonial systems of justice, or from particular interpretations of sharia or Islamic law, and per se violate international law. In addition, they fuel stigma, legitimize prejudice and expose people to family and institutional violence and further human rights abuses, such as hate crimes, death threats and torture. Such legislation and regulations reinforce gender stereotypes and foster a climate where hate speech, violence and discrimination are condoned and perpetrated with impunity by both State and non-State actors. They contribute to a social environment that explicitly permits and tolerates violence and discrimination based on sexual orientation or gender identity, creating a breeding ground for such acts.

53. Such laws also hinder the ability of relevant government departments and other actors involved in health responses. One such area is connected to the HIV response. The African Commission on Human and Peoples' Rights, in a recent report, pointed out that punitive legal environments, combined with stigma, discrimination and high levels of violence, placed gay men and other men who have sex with men at high risk of HIV infection because they are driven underground out of fear of prosecution or other negative consequences. As a result, they do not receive appropriate health education, and are reluctant to seek health-care services, testing and treatment. [53]

54. In addition, the possession of health commodities, such as condoms and lubricants, has even been used as evidence in criminal cases leading to further stigmatization and challenges in the health sector and, particularly, in relation to HIV prevention.[54]

55. These laws, while aimed at lesbian, gay and bisexual persons, often have a criminalizing impact on trans persons or are used to target, shame or single out other parts of the population. Similarly, they also endanger or hinder the work of those who defend or support the human rights of lesbian, gay, bisexual, trans and gender non-conforming persons by exposing them to attacks and intimidation (E/CN.4/2001/94, para. 89 (g)).

56. Several countries also criminalize trans persons based on their gender identity or expression, while others criminalize statements, publications or actions that discuss or refer

[51] See also Inter-American Commission on Human Rights, "Violence against LGBTI Persons" (see footnote 25), para. 50.

[52] See United Nations Population Division, World Population Prospects 2017 (available from https://esa.un.org/unpd/wpp/Download/Standard/Population/).

[53] African Commission on Human and Peoples' Rights, "HIV, the Law and Human Rights in the African Human Rights System: Key Challenges and Opportunities for Rights-Based Responses to HIV", report, December 2016, para. 51.

[54] See Global Commission on HIV and the Law, *Risks, Rights and Health*, July 2012, p. 47.

to the identity or expression of lesbian, gay, bisexual, trans and gender non-conforming persons, often referred to as "gay propaganda" (A/72/172, para. 29–48).[55] In addition, other laws and policies can have a disproportionate impact on the liberty and security of lesbian, gay, bisexual, trans and gender non-conforming persons (A/HRC/38/43/Add.1, paras. 55–63), such as those based on public decency, public morals, public health and security, and laws that criminalize conduct seen as "indecent" or "provocative". These laws tend to exacerbate police abuse and harassment, extortion and acts of violence against people based on their perceived or real sexual orientation or gender identity, drawing them into the criminal justice system, sometimes leading to further incidents of discrimination and violence. For example, trans women are often targeted and prosecuted on the basis of laws criminalizing sex work or under laws against "vagrancy", regardless of whether they are in fact engaged in sex work (A/72/172, para. 34).

B. Stigma

57. The combination of social prejudice and criminalization has the effect of marginalizing lesbian, gay, bisexual, trans and gender non-conforming persons and excluding them from essential services, including health,[56] education,[57] employment,[58] housing (A/HRC/29/23, para. 59)[59] and access to justice (ibid., para. 42; A/HRC/35/36, para. 59).[60] The spiral of discrimination, marginalization and exclusion may start within the family, extend to the community and have a life-long effect on socioeconomic inclusion. Through this process, stigmatization and exclusion intersect with poverty to the extent that, in many countries, lesbian, gay, bisexual, trans and gender non-conforming persons are disproportionately affected by poverty, homelessness and food insecurity (E/C.12/UGA/CO/1, para. 30).[61] This is often the result of early family and community rejection, compounded by bullying.[62]

58. These circumstances restrict individuals' choices and limit their ability to earn a living and participate in all aspects of life, including public and political life. The dynamics of exclusion are exacerbated when it intersects other factors, such as during humanitarian crises, or in the case of persons who face multiple forms of discrimination, for example migrants, ethnic minorities, and persons with disabilities.

59. The violence and exclusion that lesbian, gay, bisexual, trans and gender non-conforming persons endure have a detrimental impact on their health and well-being.[63] In many countries, they encounter rejection, humiliation, derision or substandard services when seeking health care. According to some research, certain health concerns that bisexual

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[55] See also Carroll and Mendos, *State-Sponsored Homophobia* (see footnote 27).

[56] World Health Organization (WHO), *Sexual health, human rights and the law*, 2015.

[57] United Nations Educational, Scientific and Cultural Organization (UNESCO), *Out in the Open: Education sector responses to violence based on sexual orientation or gender identity/expression*, 2016.

[58] M.V. Lee Badgett, "The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India", World Bank, 2014.

[59] See also Christy Mallory and Brad Sears, "Evidence of Housing Discrimination based on Sexual Orientation and Gender Identity: An Analysis of Complaints filed with State Enforcement Agencies, 2008–2014" Williams Institute, 2016.

[60] See also Kaleidoscope Trust, *Speaking Out: The rights of LGBTI citizens from across the Commonwealth*, 2015.

[61] See also Lucas Paoli Itaborahy, "LGBT people living in poverty in Rio de Janeiro", Micro Rainbow International, 2014; and Taylor N.T. Brown, Adam P. Romero and Gary J. Gates, "Food Insecurity and SNAP Participation in LGBT Community", Williams Institute, (February 2014).

[62] See UNESCO, *Good Policy and Practice in HIV and Health Education: Education Sector Responses to Homophobic Bullying*, 2012 and *Out in the Open* (see footnote 57).

[63] Ilan H. Meyer, "Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence" *Psychological Bulletin*, vol. 129, No. 5 (September 2003), pp. 674–697; UNDP, *Leave no one behind: Advancing social, economic, cultural, and political inclusion of LGBTI people in Asia and the Pacific*, 2016, pp. 36, 50–57 and 102; Blondeel et al., "Violence motivated by perception of sexual orientation" (see footnote 11).

persons face are linked to experiences of biphobia and bisexual invisibility.[64] Even where health workers do not intend to discriminate, they often lack basic information or training about specific health concerns and appropriate medical and counselling practices. In countries where non-conforming sexual orientation and gender identities are criminalized and health policies are discriminatory, abuses and discriminatory attitudes in health-care institutions are explicitly condoned. Such an environment has a negative impact on access to health-care services and health-related information, and on the quality of the services provided.[65] It also affects the ability of States to design adequate policy responses to global and public health concerns.

60. Stigma at the root of violence and discrimination corrodes the social fabric. It affects values of fundamental importance, such as empathy, social inclusion and solidarity. Recent research also provides evidence of its impact on development: it was found, for example, that a 10 per cent increase in the level of homophobia at the country level was associated with a reduction of 1.7 years in men's life expectancy.[66]

61. Lesbian, gay, bisexual, trans and gender non-conforming persons may internalize the negative attitudes and values of society, which may have a detrimental impact on their mental health and result in self-harm or violence.[67] Studies have shown that the risk for suicide among lesbians and gays may be particularly high for those who experience familial or social abuse and rejection.[68] Bullying has been shown to be a contributing factor in many suicides of trans and gender non-conforming persons,[69] while recent research suggests that around three in every four young trans persons have experienced anxiety or depression, that four out of five have engaged in self-harm at some stage, and that almost one in two has attempted suicide.[70]

C. Negation and the resulting data gap

62. Negation is adopting the position that violence and discrimination based on sexual orientation or gender identity do not exist in a particular context or that, in a given social context, there are no lesbian, gay, bisexual, trans or gender non-conforming persons. It enables violence and discrimination, and lies at the root of some of the heinous acts described in the present report. In a context of negation, perpetrators feel motivated and enabled to supress or punish diversity. Invariably, any data gathered will be unreliable, unsystematic and biased; all State measures to address violence and discrimination, be it public policy, access to justice, law reform or administrative actions, will be therefore hindered by this fact.

63. Conversely, a policy of acknowledgement of violence and discrimination based on sexual orientation and gender identity will be accompanied by data and therefore evidence of the extent of the challenges faced: for example, a survey conducted by the European Union in 2012 found that as many as 47 per cent of respondents had been subjected to discrimination or harassment during the previous year.[71] As worrisome as that information is, the Independent Expert commends this and other data-gathering exercises because they

[64] Barker et al., *The Bisexuality Report* (see footnote 45).

[65] WHO, *Prevention and treatment of HIV and other sexually transmitted infections among men who have sex with men and transgender people: Recommendations for a public health approach*, 2011.

[66] Erik Lamontagne et al., "A socioecological measurement of homophobia for all countries and its public health impact", *European Journal of Public Health*, March 2018, p. 2.

[67] Blondeel et al., "Violence motivated by perception of sexual orientation" (see footnote 11).

[68] McManama O'Brien et al., "Suicide and self-injury in gender and sexual minority populations", (see footnote 10), pp. 181–198; UNDP, *Leave no one behind* (see footnote 11).

[69] UNESCO, *Out in the Open* (see footnote 58); McManama O'Brien et al., Suicide and self-injury in gender and sexual minority populations (see footnote 10), pp. 181–198.

[70] Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A., "Trans Pathways: the mental health experiences and care pathways of trans young people. *Summary of results*", Telethon Kids Institute, Perth, Australia, 2017.

[71] European Union Agency for Fundamental Rights, *European Union lesbian, gay, bisexual and transgender survey*, 2014, p. 11.

provide the baseline that is indispensable to address the situation. The survey was the baseline for the plan of action adopted by the European Commission, a comprehensive programme that includes non-discrimination, education, employment, health, free movement, enlargement and foreign policy, asylum, and actions against hate speech and hate crime. This is clearly good practice on how data collection is the foundation of proper analysis of the causes, nature and scope of the challenges faced, and allows for the adoption of the measures necessary to eradicate violence and discrimination.

64. A major challenge in data collection is underreporting,[72] which stems from a multitude of reasons (A/HRC/38/43/Add.1, para. 52). In countries where same-sex sexual conduct is criminalized, where laws and policies are used to discriminate against lesbian, gay, bisexual, trans and gender non-conforming persons, or where stigma and prejudice are rampant, the probability that victims will dare to report abuses is very low, owing to fear of prosecution, stigma, reprisals or victimization, unwillingness to be "outed", or lack of trust. Even in progressive environments, the worry of regression may lead to underreporting. In these and other contexts, there is also limited information available regarding violence against lesbian or bisexual persons in private settings; a monitoring exercise undertaken by the Inter-American Commission on Human Rights showed that underreporting of cases of violence against lesbian, gay, bisexual, trans and gender non-conforming persons was particularly apparent in cases of non-lethal attacks, since few of them were reported to authorities, monitored by non-governmental organizations or covered by the media, and even when they were reported, it was common for the victim's sexual orientation and/or gender identity to be reported inaccurately.[73]

65. This lack of adequate data affects sectors other than justice; for example, the African Commission on Human and Peoples' Rights found that only a limited amount of information was available on the impact of HIV on transgender women and men in Africa, and qualified them to be an "invisible" population in responses to the HIV epidemic.[74] Indeed, there is little research or interventions in relation to the health of trans men who have sex with men, and few studies have collected robust data on bisexuals.[75]

VII. Support for effective State measures

66. At different levels, multiple sources support the effective implementation by States of measures to address violence and discrimination on the basis of sexual orientation or gender identity. All effective measures observed by the mandate holder share three fundamental traits: their point of departure is the acknowledgement of the problem to be addressed; they are based on evidence; and they have been designed and are implemented with the participation of the relevant communities, persons or populations.

A. Global

67. During the initial stages of the third cycle of the universal periodic review, during which 28 States were reviewed, a significant number of recommendations relating to sexual orientation and gender identity were made. Even before the creation of the mandate, communications sent by special procedure mandate holders to States and non-State actors on issues pertaining to sexual orientation and gender identity, as well as the body of work of the treaty bodies, covered various areas addressed in the present report, including positive developments, such as the adoption of legal gender recognition bills, or regressive

[72] African Commission on Human and Peoples' Rights, "HIV, the Law and Human Rights" (see footnote 53), p. 11.

[73] Inter-American Commission on Human Rights, "An Overview of Violence" (see footnote 28).

[74] African Commission on Human and Peoples' Rights, "HIV, the Law and Human Rights" (see footnote 53), p. 78.

[75] Harvey J. Makadon, Kenneth H. Mayer, Jennifer Potter and Hilary Goldhammer, *Fenway Guide to Lesbian, Gay, Bisexual, and Transgender Health*, American College of Physicians, 2nd edition, 2015, p. 29.

initiatives, such as morality laws and the reversal of progressive legal provisions. The concerns reflected in these observations and recommendations have been included in the sections above.

68. OHCHR has continued to play a critical role in the United Nations system to uphold the rights of lesbian, gay, bisexual, trans and gender non-conforming persons, including through advocacy by the High Commissioner and senior officials, monitoring and reporting, and providing technical guidance to States. For example, in 2017, OHCHR launched standards of conduct for business when tackling discrimination against LGBTI persons.[76] The same year, the OHCHR-led Free and Equal campaign released new videos and factsheets to address the bullying of LGBTI youth and to highlight the importance of inclusion and openness for LGBTI persons within culture and tradition.

B. Regional

69. In May 2017, building on the framework of its resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, the African Commission on Human and Peoples' Rights included in the agenda of its sixtieth session items pertaining to the issues of sexual orientation and gender identity, including such practices as "corrective" rape and anal examinations, and the development of training programmes for law enforcement and the need to increase efforts to ensure protection of human rights defenders.

70. In June 2017, during its forty-seventh session, the General Assembly of the Organization of American States adopted a resolution on human rights in which it, encouraged States to consider adopting measures against discrimination and violence by reason of sexual orientation, gender identity or expression, to address homophobia and transphobia, to ensure that medical practices are consistent with applicable human rights standards, and to eliminate all barriers faced by LGBTI persons with regard to equal access to political participation and other areas of public life.

71. On 9 January 2018, the Inter-American Court of Human Rights issued an advisory opinion (OC-24/17) on State obligations under the American Convention on Human Rights with regard to providing quick, transparent and accessible legal gender recognition without abusive requirements, with due respect for free and informed choice and personal integrity and the standard, under the American Convention, for the protection of family ties between same-sex persons.

72. In January 2018, the Advocate General of the European Union issued the opinion that the freedom of residence of same-sex spouses should be recognized by every State member of the European Union. On 1 March, the European Commission presented its second annual report on actions to advance LGBTI equality, which included a wide and comprehensive range of measures aimed at improving rights and ensuring legal protection, supporting monitoring systems, outreach, support for human rights defenders, data collection, and actions to advance LGBTI equality worldwide.[77]

C. National

73. In the period since its previous report, the mandate holder has received information about developments in a number of countries. The list of developments described below is indicative but by no means exhaustive.

1. Public policy and administrative action

74. Significant change can be brought about through public policy, including in the health, education, justice and immigration sectors. In Canada, in May 2017, the

[76] See www.unfe.org/standards/.

[77] European Commission, Annual Report 2017 on the List of actions to advance LGBTI equality — Leading by example.

Immigration and Refugee Board issued guidelines on the screening of asylum seekers involving sexual orientation, gender identity and gender expression; in June 2017, Cambodia introduced a plan for a new school courses on LGBT issues and gender-based violence; and in Mongolia, in August 2017, law enforcement officers initiated a programme spearheaded by civil society to build capacities to investigate hate crimes. The same month, in the United Kingdom of Great Britain and Northern Ireland, the Crown Prosecution Service extended its policy on hate crimes on the basis of sexual orientation or transgender to cover biphobic offences.

75. Comprehensive actions in the field of education were taken, in Denmark in August 2017, with the launch of the LGBT plan of action aimed at preventing discrimination and providing equal opportunities, and in South Africa, where the Department of Basic Education adopted in March 2018 a plan of comprehensive sexuality education to help young people to make informed decisions about sexuality.

76. Acknowledgment of responsibility — the opposite of negation — is an essential element in the establishment of historical truth, the process of reparation and the reconstitution of the social fabric. The Independent Expert observes intense activity in this regard. For instance, on 6 July 2017, the Minister for Justice of New Zealand apologized to hundreds of men who had been convicted for consensual homosexual activity; on 7 November, the Prime Minister of Scotland apologized for "the hurt and the harm" caused by discriminatory laws; on 28 November 2017, the Prime Minister of Canada apologized for the State's role in "systematic oppression, criminalization and violence" against the LGBT, queer and two-spirit communities from the 1950s to the early 1990s; and on 17 April 2018, the Prime Minister of the United Kingdom expressed deep regret for the fact that discriminatory legislation had been introduced across the Commonwealth, and the resulting "legacy of discrimination, violence and even death that persists today". The Independent Expert values these statements highly, in that they include both acknowledgment of the facts and acceptance of responsibility; he is persuaded that they will be valuable building blocks in the process of eradication of violence and discrimination on the basis of sexual orientation and gender identity.

2. Law reform

77. Mirroring some of the above-mentioned processes of apology and other processes involving the establishment of historical truth and reparation, a number of reparative legislative measures have been adopted by parliaments around the world: legislation on expungement of unjust convictions was passed in July 2017 in Germany, including provision for compensation for convictions; in September 2017, the Upper House of Tasmania, in Australia, passed legislation to have offences involving homosexual activity and cross-dressing wiped from the records of persons convicted for them; in Canada, funds were earmarked to compensate government employees whose careers have been affected by persecution;[78] and on 27 April 2018, Sweden announced reparations for cases of forced sterilization in gender change procedures.

78. The adoption of legislative frameworks conducive to protecting persons from violence and discrimination is a fundamental step. In this regard, the mandate holder received information on the inclusion of sexual orientation and gender expression as prohibited grounds of discrimination (in Canada, bill C-16 entered into force in June 2017 after receiving Royal Assent) and the prohibition of discriminatory acts based on sexual orientation or gender identity (in the Philippines, bill 4982 was approved in September by the House of Representatives).

79. In late 2017, legislation on gender identity was passed in Pakistan, after which an amendment eliminating the requirement of consent from a medical board was approved by the Senate on 7 March 2018 and is currently pending decision by the National Assembly.[79] In April, in Portugal, the legislative branch eliminated the need for medical certificates for young trans persons aged between 16 and 18 to change gender and name in official documents.

[78] See https://pm.gc.ca/eng/news/2017/11/28/lgbtq2-agreement-principle.

[79] See www.senate.gov.pk/uploads/documents/1521612511_419.pdf.

80. Same-sex marriage was legalized in Malta, in September 2017, in Germany in October, and in Australia in December.

81. The Independent Expert regrets to recall that 72 States still criminalize sexual orientation, and the numerous laws that are used to criminalize lesbian, gay, bisexual, trans and gender non-conforming persons.

3. Access to justice

82. The leading work of justice agencies continued in rulings ranging from those issued by the Supreme Court in Nepal in September 2017 to the Lobatse High Court in Botswana in December 2017, both allowing updates of gender markers in official identity documents; judgment T-498 of the Constitutional Court of Colombia allowing a young trans person to register under his self-identified gender; in Germany, in November 2017, the ruling of the Federal Constitutional Court ordering legislators to consider either allowing the introduction of a third gender category or eliminating gender altogether in public documents, by the end of 2018; in China, in February 2018, the judgment handed down by the Guiyang Intermediate People's Court finding that workers must not experience differential treatment because of gender identity; and in Brazil, the ruling of 1 March 2018 by the Supreme Court establishing that persons may have the name with which they self-identify on their civil documents without surgery or hormonal therapy, and on the same day by the Superior Electoral Court, that ruled that trans candidates were eligible to run for election with their self-identifying name.

83. The Independent Expert is encouraged by findings of the highest courts that signal a path to decriminalization. In January 2018, in India, a bench of three judges of the Supreme Court referred a judgment of 2013 upholding Section 377 of the Penal Code to a larger bench for a constitutional review; and on 12 April, in Trinidad and Tobago, the High Court declared unconstitutional the sections of the Sexual Offences Act that criminalized consensual same-sex activity between adults. Furthermore, on 22 March, in Kenya the Mombasa Court of Appeal ruled that forced anal examinations were unconstitutional.

84. Eliminating barriers to the work of human rights defenders is another key outcome of the work of the judiciary. For example, in November 2017, in Mozambique, the Constitutional Council repealed a law that barred LGBT organizations from being officially registered.

85. The Independent Expert also notes positive trends towards the prohibition of "conversion therapy" by administrative, parliamentary and judicial initiatives. For example, in the United States of America, 10 States, the District of Columbia and 32 localities have banned this practice; and on 1 March 2018, the European Parliament welcomed initiatives prohibiting "conversion therapy" in the report on the situation of fundamental rights in the European Union for 2016.[80] In this regard, in July 2017, a court in Zhumadian, in Henan province in China, ordered a city psychiatric hospital to publish an apology and to pay compensation to a gay man who had been forcibly admitted to the institution for "conversion treatment" in 2015.

VIII. Conclusions

86. **Violence and discrimination on the basis of sexual orientation and gender diversity exists throughout the world. The Independent Expert commends States that acknowledge the existence of this scourge, its dimension and the challenges connected to it, and exhorts others to stop negating it. The lesbian, gay, bisexual, trans and gender non-conforming persons who are victims of the heinous crimes described in the present report exist in all regions of the world, in families and communities everywhere, and together we thread the fabric of our societies every day. Negation violates the dignity of victims and is offensive to the global conscience.**

87. **Acts of violence range from daily exclusion and discrimination to the most heinous acts, including torture and arbitrary killings. There are no comprehensive and systematic data on the number of victims, but it is a safe presumption that there**

[80] European Union Agency for Fundamental Rights, Fundamental Right Report 2016.

are millions every year. At the root of these acts lies the intent to punish victims on the basis of preconceived notions of what should be their sexual orientation or gender identity.

88. **There is a plethora of actions that States can adopt to initiate the task of eradicating violence and discrimination on the basis of sexual orientation and gender identity. They include law reform, access to justice, public policy and administrative actions. Moreover, good practices exist in all corners of the world.**

IX. Recommendations

89. **To address violence and discrimination based on sexual orientation and gender identity, States must adopt a combination of laws, policies and other measures tailored to the specific context, taking into consideration how each community is distinctly affected and how other factors may have a negative impact on the vulnerability of the persons concerned. The Independent Expert recommends that these measures be evidence-based, and that the relevant communities, people and populations, and civil society organizations, effectively participate in their design and implementation.**

90. **The Independent Expert recommends that States repeal laws that criminalize consensual same-sex relations, gender identity or expression, and statements or publications or actions that discuss or refer to the identity or expression of lesbian, gay, bisexual, trans and gender non-conforming persons (so-called "anti-propaganda" laws). States should moreover review other laws and policies that exacerbate police abuse and harassment, extortion and acts of violence against people based on their actual or perceived sexual orientation or gender identity, in particular, laws based on public decency, morals, health and security, including beggary and loitering laws; and laws criminalizing conduct seen as "indecent" or "provocative", including laws criminalizing sex work.**

91. **In addition, States should ensure that the death penalty is not imposed as a sanction for consensual same-sex relations.**

92. **The Independent Expert recommends that States take all measures necessary to prevent, investigate and punish acts of violence and discrimination based on sexual orientation or gender identity perpetrated by the State and non-State actors, regardless of whether the violence was committed in the public or the private sphere, and provide reparations to victims of the said violence and discrimination.**

93. **In addition, States should enact legislation on hate crimes that defines homophobia, misogyny, biphobia and transphobia as aggravating factors for the purposes of sentencing. The Independent Expert also encourages States to adopt legislation in relation to hate speech on the grounds of sexual orientation or gender identity, and to hold to account those responsible, including political or religious leaders.**

94. **The Independent Expert calls upon States to develop comprehensive data-collection procedures in order to be able to assess uniformly and accurately the type, prevalence, trends and patterns of violence and discrimination against lesbian, gay, bisexual, trans and gender non-conforming persons. Data should be disaggregated by communities, but also by other factors such as race, ethnicity, religion or belief, health, status, age, class, and caste, or migration or economic status. The data should then inform the policies and legislative actions of States with a view not only to prevent further acts of violence and discrimination but also to address gaps in investigations, prosecution and the remedies provided. In order to prevent the misuse of collected data, States should follow a human rights-based approach to data, taking into consideration the principles of participation, self-identification, privacy, transparency and accountability. The overriding human rights principle of "do no harm" should always be respected.**[81]

95. **The Independent Expert also recommends that States:**

[81] OHCHR, *A Human Rights-Based Approach to Data: Leaving No One Behind in the 2030 Agenda for Sustainable Development*, 2015.

(a) **Create effective systems for recording and reporting hate crimes based on sexual orientation and gender identity;**

(b) **Establish specialized prosecutorial units to investigate and prosecute hate crimes based on sexual orientation and gender identity;**

(c) **Adopt specific policies, guidelines and protocols related to sexual orientation and gender identity, and provide specialized training to law enforcement personnel and persons working in the justice system to address unconscious bias that may permeate investigations and prosecutions;**

(d) **Ensure that the sexual orientation or gender identity of a victim is not used as a justification for crime or to reduce sentences, or to absolve perpetrators from criminal liability.**

96. **In addition, States should adopt anti-discrimination legislation that includes sexual orientation and gender identity among prohibited grounds, and develop specific programmes and policies to end the spiral of discrimination, marginalization and exclusion that have a negative impact on the rights of lesbian, gay, bisexual, trans and gender non-confirming persons, including their rights to health, education, work and an adequate standard of living, and on their access to justice.**

97. **To that end, the Independent Expert recommends in particular that States and other actors:**

(a) **Design and conduct public education campaigns, including on anti-bullying and sexual education;**

(b) **Formulate education policies addressing harmful social and cultural bias, misconceptions and prejudice;**

(c) **Address negative and/or stereotypical portrayals of lesbian, gay, bisexual, trans and gender non-conforming persons in the media, and encourage the media to play a positive role in addressing stigma, prejudice and discrimination;**

(d) **Address the vulnerability of the most marginalized and excluded lesbian, gay, bisexual, trans and gender non-conforming persons, and take affirmative action to redress structural discrimination and to remedy socioeconomic inequalities.**

98. **The Independent Expert recommends that States enact gender recognition laws concerning the rights of trans persons to change their name and gender markers on identification documents. Such procedures should be quick, transparent and accessible, without abusive conditions, and respectful of the principle of free and informed choice, and of personal integrity.**

99. **The Independent Expert also calls upon States to take measures to improve the health and well-being of lesbian, gay, bisexual, trans and gender non-conforming persons, and to guarantee their access to quality health-care services and health-related information.**

100. **States should ban so-called "conversion therapy", forced medical examinations, including anal examinations, involuntary treatment, forced or otherwise involuntary psychiatric evaluations, forced or coerced surgery, sterilization and other coercive medical procedures imposed on lesbian, gay, bisexual, trans and gender non-conforming persons.**

101. **The Independent Expert urges States to take measures to protect defenders and supporters of the rights of lesbian, gay, bisexual, trans and gender non-conforming persons from attacks, intimidation and other abuses, and to create safe and enabling spaces for their work.**